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**49 CFR Parts 1520, 1540, 1542, et al.
Air Cargo Security Requirements; Final
Rule**

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1520, 1540, 1542, 1544, 1546, and 1548

[Docket No. TSA–2004–19515; Amendment Nos. 1520–4, 1540–7, 1542–2, 1544–5, 1546–2, and 1548–2]

RIN 1652–AA23

Air Cargo Security Requirements

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration is amending its regulations to enhance and improve the security of air cargo transportation. This final rule requires airport operators, aircraft operators, foreign air carriers, and indirect air carriers to implement security measures in the air cargo supply chain as directed under the Aviation and Transportation Security Act. This final rule also amends the applicability of the requirement for a “twelve-five” security program for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to those aircraft with a maximum certificated takeoff weight of more than 12,500 pounds to conform to recent legislation.

DATES: *Effective Date:* This final rule is effective October 23, 2006.

Compliance Date: By November 22, 2006, Indirect air carriers must comply with the requirements for Indirect air carrier training under § 1548.11.

By December 1, 2006, aircraft operators, foreign air carriers, and indirect air carriers must comply with the requirements for—

Security threat assessments under §§ 1544.228, 1546.213, 1548.15, and 1548.16; and

Indirect air carriers that do not currently hold a security program under part 1548, and that offer cargo to an aircraft operator operating under a full all-cargo program or a comparable foreign air carrier under § 1546.101(e), establishment of, and operation under, a TSA security program in part 1548.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation’s electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office’s Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting TSA’s Law and Policy Web page at <http://www.tsa.gov> and accessing the link for “Law and Policy” at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA’s jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration’s Web page at http://www.sba.gov/advo/laws/law_lib.html.

Abbreviations and Terms Used in This Preamble

AAAE American Association of Airport Executives
 AAPA Association of Asia Pacific Airlines
 ACCA Air Courier Conference of America
 ACISP All-Cargo International Security Procedures
 ACI-NA Airports Council International-North America
 AEA Association of European Airlines
 AES Automated Export System
 ALPA Air Line Pilots Association International
 AOPA Aircraft Owners and Pilots Association
 ASAC Aviation Security Advisory Committee
 ATA Air Transport Association
 ATSA Aviation and Transportation Security Act
 CAA Cargo Airline Association
 CBP U.S. Customs and Border Protection
 CFR Code of Federal Regulations
 CHRC Criminal History Records Check
 DHS Department of Homeland Security
 DSIP Domestic Security Integration Program
 EA Emergency Amendment
 FAA Federal Aviation Administration
 HAZMAT Hazardous Materials
 IAC Indirect Air Carrier
 IACSSP Indirect Air Carrier Standard Security Program
 IATA International Air Transport Association

MSP Model Security Program
 MTOW Maximum certificated take-off weight
 NACA National Armored Car Association
 NATA National Air Transport Association
 NCBFAA National Customs Brokers and Forwarders Association
 RAA Regional Airline Association
 RACCA Regional Air Cargo Carriers Association
 SIDA Security Identification Display Area
 SD Security Directive
 SSI Sensitive Security Information
 STA Security Threat Assessment
 TSA Transportation Security Administration
 TFSSP Twelve-Five Standard Security Program
 UPS United Parcel Service

Outline of Final Rule

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I. Background

This final rule implements air cargo security requirements under the Aviation and Transportation Security Act (ATSA), Pub. L. 107–71. ATSA requires TSA to implement the following requirements:

- Provide for screening of all property, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by a domestic or foreign air carrier;¹ and
- Establish a system to screen, inspect, or otherwise ensure the security of freight that is to be transported in all-cargo aircraft as soon as practicable.²

TSA published a notice of proposed rulemaking in the **Federal Register** on

¹ 49 U.S.C. 44901(a).

² 49 U.S.C. 44901(f).

V.G. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion. The FAA order continues to apply to TSA in accordance with the Homeland Security Act (Pub. L. 107–296), until DHS publishes its NEPA implementing regulations.

V.H. Energy Impact

The energy impact of this document has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

VI. List of Subjects*49 CFR Part 1520*

Air transportation, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1540

Air carriers, Aircraft, Airports, Civil aviation security, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Air carriers, Aircraft, Airport security, Aviation safety, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign air carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

VII. The Amendment

■ For the reasons set forth above, the Transportation Security Administration amends title 49 of the Code of Federal Regulations parts 1520, 1540, 1542, 1544, 1546, and 1548 to read as follows:

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

■ 1. The authority citation for part 1520 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40119, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 2. Amend § 1520.5 by revising paragraphs (b)(2)(i), (b)(3)(i), and (b)(4)(i) to read as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(2) * * *

(i) Issued by TSA under 49 CFR 1542.303, 1544.305, 1548.19, or other authority;

* * * * *

(3) * * *

(i) Information circular issued by TSA under 49 CFR 1542.303, 1544.305, 1548.19, or other authority; and

* * * * *

(4) * * *

(i) Any device used by the Federal Government or any other person pursuant to any aviation or maritime transportation security requirements of Federal law for the detection of any person, and any weapon, explosive, incendiary, or destructive device, item, or substance; and

* * * * *

SUBCHAPTER C—CIVIL AVIATION SECURITY**PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES**

■ 3. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 4. Amend § 1540.5 by revising the definition of “indirect air carrier” and adding a new definition of “unescorted access to cargo” in alphabetical order to read as follows:

§ 1540.5 Terms used in this subchapter.

* * * * *

Indirect air carrier (IAC) means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of an air carrier. This does not include the United States Postal Service (USPS) or its representative while acting on the behalf of the USPS.

* * * * *

Unescorted access to cargo means the authority granted by an aircraft operator

or IAC to individuals to have access to air cargo without an escort.

■ 5. Amend § 1540.111 by revising paragraph (a)(1) to read as follows:

§ 1540.111 Carriage of weapons, explosives, and incendiaries by individuals.

(a) * * *

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under this subchapter;

* * * * *

■ 6. Add new Subpart C—Security Threat Assessments to read as follows:

Subpart C—Security Threat Assessments

Sec.

1540.201 Applicability and terms used in this subpart.

1540.203 Operator responsibilities.

1540.205 Notification.

1540.207 Appeal procedures.

1540.209 Security threat assessment fee.

Subpart C—Security Threat Assessments

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to—

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h);

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e);

(3) Each indirect air carrier operating under a security program described in 49 CFR 1548; and

(4) Each individual with, or applying for, unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—*Individuals* means the individuals listed in paragraphs (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An individual poses a security threat under this subpart when TSA determines that he or she is known to pose or suspected of posing a threat—